

1 that.

2 Q. Leaving aside how you and I might  
3 describe it differently, when did you first see  
4 that?

5 A. Shortly after the hearing. Whatever the  
6 most recent hearing was. Before Judge Fitzgerald  
7 when I believe you mentioned, I don't know if it  
8 was in open court or if it was, you know, off the  
9 record. But you had mentioned that ZAI had filed  
10 a class claim. And that was the first that I had  
11 become aware of that claim. So I asked someone  
12 to send it to me.

13 Q. Do you know if anyone else involved with  
14 the ZAI negotiations had seen that claim prior to  
15 the execution of the memorandum of agreement in  
16 November?

17 A. I do not know.

18 Q. Do you recall that we had a claim for ZAI  
19 in the underlying case?

20 A. I recall that you claim you have a claim,  
21 yes.

22 Q. Do you recall that the court found that  
23 we did have a ZAI claim?

24 A. I was not aware of that until you



1 mentioned it in court. And on checking the court  
2 order in which attic insulation was included  
3 within the definition of asbestos containing  
4 surfacing material, I noted that the court order  
5 was issued after Grace had filed its petition for  
6 Chapter 11 protection. So, consequently, you  
7 inferred that you would convince the court to  
8 include attic insulation as a surfacing material,  
9 which is a position that Grace would strongly  
10 object to had it been given the opportunity to so  
11 object. But since we were not involved in that  
12 post-petition order, then I would -- Grace would  
13 take the position that that order is ineffective  
14 as to Grace.

15 Q. Well, that's a lot to chew on. But let's  
16 go back a little bit.

17 Were you aware at the time of the  
18 certification evidentiary hearing that Anderson  
19 claimed that ZAI and masonry fill were part of  
20 the class?

21 A. No, I was not aware at that time.

22 Q. Were you aware between that time in early  
23 September 2000 and what you call the conditional  
24 order by Judge Hayes, that Anderson claimed that



1 ZAI and masonry fill were part of the class?

2 A. Let me answer it this way. The first  
3 time I think I became aware of Anderson's  
4 position that surfacing material included attic  
5 insulation and masonry fill was when I first saw  
6 Mr. Ferry's affidavit setting forth certain --  
7 reporting certain facts or what purport to be  
8 facts from Grace documents concerning shipments  
9 of Vermiculite in South Carolina. Something to  
10 that effect. And I don't have the date of that  
11 affidavit. But it would have been about that  
12 time.

13 Q. Did you review the transcript of the  
14 evidentiary hearing on Anderson's motion to  
15 certify in South Carolina?

16 A. No, I did not.

17 Q. Do you recall submitting, I believe I  
18 asked you this earlier, an affidavit of Morton  
19 Corn on whether ZAI is a surfacing material?

20 A. No.

21 Q. Let me show you, Mr. Finke, a certain  
22 defendant's post-hearing brief in opposition to  
23 class certification dated October 23, 2000, in  
24 the Anderson case. I know you see a lot of



1 pleadings. But would you look at this and tell  
2 me if this is the type of pleading that you  
3 normally would have reviewed?

4 A. I'm sorry. Your question is have I  
5 reviewed Dr. Corn's affidavit?

6 Q. I haven't gotten there yet. But you  
7 answered my next question.

8 First of all, you recognize that as a  
9 pleading Grace submitted in the certification  
10 battle in South Carolina?

11 A. Yes.

12 Q. And I believe your affidavit is attached  
13 as well, isn't it?

14 A. Yes.

15 Q. And Dr. Corn's affidavit is attached  
16 addressing this specific issue that you were  
17 addressing then?

18 A. Yes.

19 Q. Whether ZAI is a surfacing material?

20 A. Yes.

21 Q. Now, I understand that's been nine years  
22 ago, eight and a half. But would you agree with  
23 me now that, when we were arguing about  
24 certification in South Carolina, Anderson was



1 claiming ZAI was part of the class and Grace was  
2 claiming it was not part of the class?

3 A. I would have to agree based on this, yes.

4 Q. Is your opinion about masonry fill the  
5 same as ZAI, that is, is it your view that  
6 masonry fill is not a surfacing material in the  
7 same way that, in your opinion, and in Dr. Corn's  
8 opinion, that ZAI is not a surfacing material?

9 A. Yes, same opinion.

10 Q. Is masonry fill covered by the bar date  
11 in the March 31, 2003, bar date for traditional  
12 PD claims?

13 A. I believe it is.

14 Q. Do you know why masonry fill is covered  
15 by that bar date and ZAI is not, or vice-versa?

16 A. Well, ZAI was specifically excluded, I  
17 believe.

18 Q. Yes.

19 A. From the bar date.

20 Q. Well, do you know why ZAI and masonry  
21 fill are not treated as the same other than  
22 that's just what the judge did?

23 A. I don't recall the reasons why it was  
24 done that way.



1 Q. Well, does Grace have a position that  
2 there is some difference that would require  
3 different types of treatment in a plan of  
4 reorganization?

5 A. Well, there are differences in nature of  
6 the product and nature of the defenses that would  
7 be raised in response to claims based on those  
8 products. But if you're asking -- if you're  
9 asking me from a bankruptcy standpoint whether  
10 there are -- they should be treated in different  
11 classes or subclasses, then the short answer is,  
12 I don't know. Maybe I just don't understand your  
13 question.

14 Q. Well, Monokote and Versakote and  
15 acoustical plastic are all treated the same way  
16 subject to the same bar date order, right?

17 A. Right.

18 Q. And masonry fill is treated the same way  
19 as Monokote and Versakote and acoustical plastic  
20 and, at least as far as a bar date order is  
21 concerned, and I'm trying to get from your  
22 perspective; the man who has been doing this for  
23 a few years, whether, at least from an academic  
24 standpoint, masonry fill really should be treated



1 with Zonolite attic insulation?

2 A. Well, I may have misspoken. I don't -- I  
3 don't frankly recall whether masonry fill was  
4 included in the March 31, 2003 bar date or not.  
5 I'd have to look at the bar date and order.

6 Q. You can assume that it is. Because,  
7 frankly, I agree with you that it is listed in  
8 the bar date materials.

9 A. Again, you may be right. I'm not  
10 disputing it. But I just don't recall enough --  
11 with enough certainty to say one way or the  
12 other.

13 Q. Who is more likely to notice that it has  
14 Grace's product, a homeowner with Zonolite attic  
15 insulation in the ceiling or a building owner  
16 with masonry fill in the crevices of its concrete  
17 block?

18 MS. ESAYIAN: Objection to the form  
19 of the question. You can answer, if you can.

20 THE WITNESS: I don't know how to  
21 answer that question.

22 BY MR. SPEIGHTS:

23 Q. I mean, do you have an opinion? I mean  
24 here is Grace who wants to give notice to people



1 to file a claim by a certain date. Does Grace  
2 believe that people are more likely to know they  
3 have Zonolite attic insulation or masonry fill?

4 MS. ESAYIAN: Same objection.

5 THE WITNESS: More likely in what  
6 context?

7 BY MR. SPEIGHTS:

8 Q. More likely to know that they've got the  
9 product so they would know to file a claim before  
10 a bar date.

11 A. At what point in time?

12 Q. Between 2003 and 2008.

13 A. At that time, in that time frame, I think  
14 it's more likely they would know they would have  
15 Zonolite attic insulation than masonry fill. To  
16 the extent they would know either.

17 Q. Mr. Finke, the debtors have recently  
18 filed Docket 21033 and notice of filing the  
19 debtors' property damage expert report. And this  
20 expert report is by Denise Neumann-Martin. Are  
21 you familiar with that report?

22 A. Yes, I am.

23 Q. What involvement, if any, have you had  
24 with the generation and production of this





1 report?

2 A. I reviewed a couple of drafts and  
3 provided some comments on the drafts.

4 Q. Were you the contact person at Grace  
5 itself to deal with is it Dr. Martin?

6 A. Offhand, I don't know.

7 Q. All right. Were you the contact --

8 A. I have not met her and don't recall.

9 Q. Were you the contact person to deal with  
10 expert Martin?

11 MS. ESAYIAN: The contact person at  
12 the company?

13 MR. SPEIGHTS: At the company.

14 THE WITNESS: Well, even that's  
15 ambiguous.

16 BY MR. SPEIGHTS:

17 Q. All right. What involvement have you had  
18 with expert Martin?

19 A. Other than receiving a couple of drafts  
20 of her report and providing input via e-mail,  
21 that's the extent of my involvement.

22 Q. Who chose her as an expert for Grace?

23 A. Outside counsel, I believe.

24 Q. I believe you said this. But you had



1 never worked with her before in any matter before  
2 she prepared this?

3 A. Correct.

4 Q. And does this report of expert Martin  
5 represent Grace's position in this bankruptcy  
6 regarding the matters she addresses?

7 A. Yes.

8 Q. Do you know anyone else who dealt with  
9 expert Martin besides you?

10 A. Attorneys at both Kirkland & Ellis and  
11 Reed Smith.

12 Q. Which attorneys at Kirkland?

13 A. That's a good question. I believe Ted  
14 Freedman and possibly Deanna Boll at Kirkland &  
15 Ellis. And Doug Cameron at Reed Smith.

16 Q. The report that I have seen does not have  
17 certain referenced attachments. Have you seen  
18 the attachments?

19 A. Refresh my recollection on what  
20 attachments were supposed to be included.

21 Q. I may have misstated that as attachments.  
22 She refers to a number of documents  
23 upon which she bases her views or opinions. Do  
24 you have copies of those sources?



1 A. Not all of them, no.

2 Q. When she supplied you with the copy of  
3 her final report or any interim drafts, did they  
4 have copies of what she relied on?

5 A. No.

6 Q. What you had you already had?

7 A. Correct.

8 Q. Are you familiar with the Redbook, EPA  
9 Redbook?

10 A. No, I'm not.

11 Q. Did you supply her with any of the  
12 materials she reviewed?

13 A. I believe we did supply her with a couple  
14 of them.

15 Q. And let me hand you the report. You can  
16 tell me what you supplied her.

17 A. Is this the list, Mr. Speights? I'm  
18 sorry, on page three.

19 Q. I believe so. But we'll let you answer  
20 that, just page three of the report.

21 A. Okay. We sent to the expert item one,  
22 list of historical Class 7A and Class 7B claim  
23 filings. And item six, which is a paper  
24 concerning the number of buildings in Canada



1 containing the ZAI.

2 We might have also sent number two,  
3 data bases of Class 7A and Class 7B claims. But  
4 I don't know that for a fact.

5 Q. 7A would include the traditional products  
6 such as Monokote, is that correct?

7 A. Yes.

8 Q. The list of historical Class A ... claim  
9 filings, what list did you supply her?

10 A. I believe it was just a list of case  
11 names, of cases that had been filed against  
12 Grace.

13 Q. How did you generate that list?

14 A. My legal assistant generated it from our  
15 case management system data base that we have in-  
16 house.

17 Q. And Class 7B claim filings, that would be  
18 Zonolite claims, right?

19 A. Yes.

20 Q. And did your assistant do the same thing  
21 there?

22 A. Yes.

23 Q. And you said possibly two data bases of  
24 Class 7A and Class 7B claims, et cetera. Is that



RICHARD CHARLES FINKE

133

1 the BMC data or is that something else?

2 A. I'm not sure. That's why -- I'm not sure  
3 what that refers to. If it is a data base  
4 relating to claims filed in the bankruptcy  
5 proceedings, then I don't think -- I don't think  
6 we provided that.

7 Q. I think I covered this as thoroughly as I  
8 possibly could have. But to make sure, I'm going  
9 to go back and ask you one more time.

10 Do you recall the name Anderson,  
11 Speights or opt outs ever being discussed in all  
12 of your negotiations and your in-house  
13 discussions about the ZAI settlement?

14 MS. ESAYIAN: I'm going to object to  
15 the form of that question in that there are  
16 multiple questions rolled into one there. If you  
17 can answer, go ahead.

18 THE WITNESS: I do not recall any  
19 discussion of Anderson, Speights or opt outs. I  
20 would not rule out the possibility that at one  
21 point in the many discussions one or all of those  
22 terms were raised or mentioned. But I do not  
23 recall there being any discussion about them.

24 BY MR. SPEIGHTS:



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

134

1 Q. Mr. Finke, let me show you what purports  
2 to be a W. R. Grace invoice for MK3. Would you  
3 agree with me that is what that document is?

4 A. Yes, I would agree with that.

5 Q. And is that the type of document that you  
6 have seen on many occasions, a document, an  
7 invoice generated by Grace historically showing  
8 the sale of a product?

9 A. Yes.

10 Q. And do you have some of those documents  
11 in the document depository?

12 A. Yes.

13 Q. And do you produce some of those  
14 documents when properly requested by plaintiffs,  
15 or did you before the bankruptcy?

16 A. Yes.

17 Q. And would you agree with me that in that  
18 case it shows Monokote being shipped to a job  
19 site in South Carolina, Byars Machine Co.?

20 A. No, I would not characterize -- I would  
21 not necessarily characterize Byars Machine Co.  
22 as a job site.

23 Q. All right. May I see it a minute?

24 A. Yes.





RICHARD CHARLES FINKE

135

1 Q. Would you agree it was sold to Byars  
2 Machine Co., Post Office Box 486, Laurens, South  
3 Carolina?

4 A. Yes. I can't make out the post office  
5 box number. I assume that's not terribly  
6 important.

7 MR. SPEIGHTS: Let me mark this as  
8 Exhibit 2.

9 (Finke Deposition Exhibit No. 2 was  
10 marked for identification.)

11 BY MR. SPEIGHTS:

12 Q. Let me show you another one. I'll refer  
13 to it as the Landmark job. Is this another  
14 invoice showing the sale of Monokote?

15 A. Yes.

16 Q. And would the same be true for this  
17 invoice as a prior one, this would be the type of  
18 document that you might have in the documents  
19 depository?

20 A. Yes.

21 Q. And do you agree with respect to that  
22 one, it shows the job site as being the Landmark,  
23 I can't remember if it's Motel or Hotel?

24 A. It's possible that Landmark job refers to





RICHARD CHARLES FINKE

136

1 a job site. But it's not -- it doesn't really  
2 refer to a building. Landmark could be the name  
3 of an owner. To me, it's ambiguous as to whether  
4 that's a job site. But it was shipped to that  
5 location, yes.

6 Q. The Landmark job, 1501 South Ocean  
7 Boulevard, Myrtle Beach, correct?

8 A. Yes.

9 Q. And we have over here sold to was the  
10 Columbia Plastering, which would appear to be the  
11 applicator, correct?

12 A. I would agree with that, yes.

13 MR. SPEIGHTS: Let's mark that as the  
14 next exhibit, please.

15 (Finke Deposition Exhibit No. 3 was  
16 marked for identification.)

17 BY MR. SPEIGHTS:

18 Q. Let me show you another one shipped to  
19 St. Francis Hospital, Greenville, South Carolina.  
20 Do you agree that that was material sold for use  
21 in the St. Francis Hospital in Greenville, South  
22 Carolina?

23 A. I would agree that it's likely that the  
24 Monokote reflected in this invoice was shipped



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

137

1 for installation into the St. Francis Hospital.  
2 I would not say it's conclusive because we do  
3 know that there were, on occasion, was not the  
4 norm but on occasion a plasterer would have  
5 enough Monokote shipped to a particular site for  
6 use on more than one construction site.

7 Q. You're just telling me that some of the  
8 Monokote shipped to St. Francis could have been  
9 used elsewhere, correct?

10 A. Correct. As reflected on this invoice,  
11 correct.

12 MR. SPEIGHTS: Let's mark that as the  
13 next exhibit, the St. Francis invoice.

14 (Finke Deposition Exhibit No. 4 was  
15 marked for identification.)

16 BY MR. SPEIGHTS:

17 Q. Let me show you one for the South  
18 Carolina National Bank job. Another invoice.

19 Do you agree that that shows that  
20 Monokote was used for the South Carolina bank job  
21 in Columbia, South Carolina?

22 A. I would agree that at least some of it  
23 was, yes.

24 MR. SPEIGHTS: Mark that, please.



RICHARD CHARLES FINKE

138

1 (Finke Deposition Exhibit No. 5 was  
2 marked for identification.)

3 BY MR. SPEIGHTS:

4 Q. I'll assure you that I'm not going to  
5 mark every invoice, Mr. Finke, but two or three  
6 more.

7 The next one is shipped to Roper  
8 Hospital, Charleston, South Carolina. Would you  
9 agree that that's an invoice for a Monokote  
10 material to be used at Roper Hospital?

11 A. Yes, I would agree with that, that it  
12 reflects Monokote shipped for use in whole or in  
13 part to Roper Hospital.

14 MR. SPEIGHTS: Mark that, please.

15 (Finke Deposition Exhibit No. 6 was  
16 marked for identification.)

17 BY MR. SPEIGHTS:

18 Q. And, lastly, one for First Federal  
19 Savings & Loan, Main Street in Columbia, South  
20 Carolina. Would you agree that's Monokote for  
21 that savings and loan?

22 A. Yes, I would.

23 MR. SPEIGHTS: Let's mark this as  
24 Exhibit 7.



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

139

1 (Finke Deposition Exhibit No. 7 was  
2 marked for identification.)

3 BY MR. SPEIGHTS:

4 Q. Do you know how many invoices Grace has  
5 in its documents depository for asbestos-  
6 containing surface treatment?

7 MS. ESAYIAN: I'm going to object to  
8 the term asbestos containing surface treatment  
9 materials since actually you used the term  
10 asbestos containing surface treatment which isn't  
11 even --

12 MR. SPEIGHTS: Actually, I  
13 intentionally used the term asbestos containing  
14 surface treatment as opposed to surfacing  
15 materials. And Mr. Finke and I disagree about  
16 whether there is a difference. I understand  
17 that. We have been disagreeing since 2000.

18 MS. ESAYIAN: Right. Preserve that  
19 objection.

20 THE WITNESS: No, I do not know how  
21 many invoices are in the repository.

22 BY MR. SPEIGHTS:

23 Q. Would you say a minimum of hundreds?

24 A. Yes.



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

140

1 Q. Thousands?

2 A. Yes.

3 Q. Now, we talked earlier about the  
4 computerized data base to the documents in the  
5 depository in one of the fields, which is job  
6 sites, correct?

7 A. I believe so, yes.

8 Q. Now, if we wanted to see if there were  
9 any job sites on Columbia, South Carolina, could  
10 you search it by location? Could you search  
11 Columbia?

12 A. I believe so.

13 Q. Could you search by specific job sites  
14 like First Federal Savings & Loan?

15 A. Yes.

16 Q. Could you search by date?

17 A. Yes. The date of the document, yes.

18 Q. The date of the invoice?

19 A. Right. In this case, an invoice, yes.

20 Q. Now, are there other job site types of  
21 documents that fall into the category of job site  
22 in that data base beside invoices?

23 A. I don't know. I was not involved. I  
24 wasn't even employed by Grace at the time they



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

141

1 coded these. So I don't know.

2 Q. Earlier, Mr. Finke, we discussed our Boca  
3 Raton meeting in early 2005 and some exchange of  
4 documents. Let me show you an e-mail from you to  
5 me of March 4, 2005, and the attached  
6 stipulation, and ask if that is an e-mail you  
7 sent to me on this date and the attached  
8 stipulation dealing with certain types of claims  
9 that we had agreed to, quote, put on the shelf?

10 MS. ESAYIAN: Do you have the  
11 exhibit?

12 MR. SPEIGHTS: Do I have what?

13 MS. ESAYIAN: The exhibit.

14 MR. SPEIGHTS: What exhibit?

15 MS. ESAYIAN: The exhibit in  
16 reference to the stipulation.

17 MR. SPEIGHTS: No. The stipulation  
18 was never filed.

19 MS. ESAYIAN: But do you have the  
20 exhibit that was -- you don't have the exhibit?

21 MR. SPEIGHTS: I printed Mr. Finke's  
22 e-mail and the attachment.

23 MS. ESAYIAN: All right.

24 THE WITNESS: Yes, I certainly sent



RICHARD CHARLES FINKE

142

1 the e-mail. And I have no reason to think this  
2 wasn't the attachment that was sent with the  
3 e-mail.

4 MR. SPEIGHTS: Let's mark this as the  
5 next exhibit. That is the e-mail and the  
6 attached stipulation.

7 (Finke Deposition Exhibit No. 8 was  
8 marked for identification.)

9 BY MR. SPEIGHTS:

10 Q. Now let me show you two e-mails of March  
11 17, one at 12:29 and one at 12:45, from me to  
12 you, and ask if that reflects that I sent you  
13 back a revised stipulation, one in Word and one  
14 in Word Perfect? That's the reason for the two  
15 e-mails.

16 A. I agree that's what the documents say.

17 Q. And I believe you earlier said that you  
18 recall you sent me a stipulation and I sent you  
19 something back, isn't that correct?

20 A. I believe that's correct, yes.

21 MR. SPEIGHTS: Let's mark these two  
22 e-mails as the next exhibit.

23 (Finke Deposition Exhibit No. 9 was  
24 marked for identification.)



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

143

1 BY MR. SPEIGHTS:

2 Q. Now let me hand you, finally, an e-mail  
3 from me to you of April 7, 2005, stating, quote,  
4 I just want to confirm that the ball is in your  
5 court. End quote.

6 Did you receive that e-mail from me,  
7 Mr. Finke?

8 A. I don't have an independent recollection  
9 of receiving it. But I don't have any reason to  
10 believe that I didn't.

11 MR. SPEIGHTS: Let's mark it, then,  
12 as the next exhibit.

13 (Finke Deposition Exhibit No. 10 was  
14 marked for identification.)

15 BY MR. SPEIGHTS:

16 Q. Mr. Finke, you and I have dealt with each  
17 other for close to 20 years, I think. I never  
18 recall, except for this one instance, of your not  
19 getting back to me. Without yet discussing why  
20 or what happened or anything else, do you agree  
21 that after I sent you the revised stipulation,  
22 you did not get back to me concerning this  
23 stipulation?

24 A. I would agree with that.





RICHARD CHARLES FINKE

144

1 Q. Did Grace decide to proceed in another  
2 direction?

3 A. I cannot answer that question without  
4 divulging privileged communications.

5 Q. Would that be privileged communications  
6 with outside counsel?

7 A. No.

8 Q. Would that be privileged communications  
9 with the general counsel of W. R. Grace?

10 A. Yes.

11 Q. And by the, would that have been  
12 Mr. Shelnitz?

13 A. That's what I'm taking my time about.  
14 I'm not sure who was general counsel at that  
15 particular point in time.

16 Q. Would it be fair to say that somebody  
17 other than Richard Finke decided to change  
18 directions?

19 MS. ESAYIAN: Objection to form.

20 THE WITNESS: Yes.

21 BY MR. SPEIGHTS:

22 Q. Would it be fair to say that somebody  
23 beside Richard Finke decided not to give me a  
24 telephone call or contact me and tell me Grace



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

145

1 was changing directions?

2 A. I don't agree with the wording of your  
3 question. You are correct, it was not my  
4 decision.

5 Q. Thank you, sir.

6 It was not Bob Beber's decision  
7 either, was it?

8 MS. ESAYIAN: Objection to the extent  
9 that that invades the privilege that he has  
10 already attested to.

11 MR. SPEIGHTS: I'll withdraw the  
12 question. I'll withdraw it.

13 BY MR. SPEIGHTS:

14 Q. Let me back up with some little  
15 housecleaning I have highlighted on my sheet over  
16 lunch.

17 Who is in charge of the SBA today?

18 A. I don't know. I really have no idea.

19 Q. Why is it still in existence?

20 A. I don't know that either. I have had no  
21 contact with anybody from SBA or representing  
22 SBA.

23 Q. If I wanted to notice --

24 A. For a long time.



RICHARD CHARLES FINKE

146

1 Q. Excuse me. If I wanted to find out if it  
2 is still in existence, who would you suggest that  
3 I talk to about a conversation about a  
4 deposition?

5 MS. ESAYIAN: Objection to  
6 foundation. You can answer, if you can.

7 THE WITNESS: She is going to kill  
8 me.

9 The Grace person who is liaison with  
10 SBA is Dori Kuchinsky.

11 BY MR. SPEIGHTS:

12 Q. I actually know Ms. Kuchinsky. And  
13 you're probably right. But leaving that aside.

14 Is she still in Washington?

15 A. She has an office in Leesburg, Virginia.  
16 And also occasionally comes to the Columbia  
17 headquarters.

18 Q. Is she full-time with Grace?

19 A. Yes, she is.

20 Q. What's her job?

21 A. Senior litigation council.

22 Q. Mr. Finke, I will show you an excerpt  
23 from the debtors' memorandum in support of motion  
24 for entry of a case management order, motion to



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

147

1 establish bar date, motion to approve claim forms  
2 and motion to approve notice program dated June  
3 27, 2001, Docket 587. And you can look at the  
4 whole excerpt I have. But it has a section here  
5 on this motion for CMO and sometimes we call it  
6 the bar date motion. But the memorandum on  
7 traditional asbestos property damage claims.

8 Do you recall either reading that  
9 section at the time or did you contribute to this  
10 section back in 2001?

11 MS. ESAYIAN: Since this is only an  
12 excerpt, are you representing for the record that  
13 this excerpt is the only portion of this pleading  
14 that discusses traditional PD claims?

15 MR. SPEIGHTS: No. I will be glad to  
16 go download the entire hundreds of pages if you  
17 like. But that's the only one I'm interested in.  
18 There is a statement in that section that I'm  
19 interested in asking him about. And I may have  
20 included two sections in the document that is in  
21 front of you now.

22 THE WITNESS: I don't recall if I  
23 reviewed this document at the time or whether I  
24 contributed to it. I forget exactly what your



RICHARD CHARLES FINKE

148

1 question was.

2 BY MR. SPEIGHTS:

3 Q. Okay. Let me go ahead and have the court  
4 reporter mark the excerpt and then I will ask you  
5 about a couple sentences in it. Even though you  
6 might not have been the author of it.

7 (Finke Deposition Exhibit No. 11 was  
8 marked for identification.)

9 BY MR. SPEIGHTS:

10 Q. First of all, in the discussion on the  
11 traditional asbestos property damage claims, it  
12 refers to seven cases that were active or semi-  
13 active at the time. Do you recall that?

14 A. I saw that in the document, yes, when I  
15 just reviewed it.

16 Q. And let me go over the seven and make  
17 sure I understand what the seven were.

18 It says one has been on the suspense  
19 calendar since 1990 in Louisiana. That was  
20 Mr. Dies' Jefferson case, is that right?

21 A. Jefferson Parish, yes.

22 Q. That was a school case, correct?

23 A. Yes.

24 Q. Next, Grace was awaiting a dismissal



WILCOX & FETZER LTD.  
Registered Professional Reporters

1 order in the second case due to product  
2 misidentification.

3 What was that case?

4 A. The District of Columbia case.

5 Q. The next one was one awaiting a decision  
6 by the Ohio Supreme Court.

7 What was that case?

8 A. That was the Trumble Hospital, I believe,  
9 that Mr. McLean brought against us in Ohio.

10 Q. Has that case been resolved now?

11 A. The claim that Trumble filed in the  
12 Chapter 11 is the subject of a settlement,  
13 approved settlement agreement.

14 Q. Next is a fourth case that was on appeal  
15 in New York State after the trial court entered a  
16 verdict against Grace despite the jury's  
17 apportionment of 62 percent liability to  
18 plaintiffs.

19 That would be Mr. Westbrook's Solo  
20 case, wouldn't it?

21 A. Yes.

22 Q. And then it has, lastly, three cases were  
23 in pretrial litigation. One of those cases,  
24 Prudential, was dismissed last week.



RICHARD CHARLES FINKE

150

1 Was it dismissed as to Grace or  
2 dismissed as to U.S. Gypsum?

3 A. I believe it was dismissed with prejudice  
4 as to U.S. Gypsum. I don't recall if it was with  
5 prejudice. I believe it was dismissed with  
6 respect to Grace. But I don't recall if it was  
7 with prejudice.

8 Q. And that leaves two and the two are not  
9 listed. But I believe the two would be Anderson  
10 and 100 Pine; am I right?

11 A. Yes.

12 Q. So is it fair to say that Speights &  
13 Runyan, by itself, or with co-counsel, had the  
14 only two active cases at the time of the  
15 bankruptcy, active traditional as opposed to  
16 property damage cases?

17 A. No.

18 Q. Why is that not correct?

19 A. Because there should have been an 8th  
20 case.

21 Q. Is that Mr. Dies' Texas case?

22 A. Yes.

23 Q. It was not listed in that section, right?

24 A. No, it was not.



WILCOX & FETZER LTD.  
Registered Professional Reporters

1 Q. And is that one of his Orange County  
2 cases?

3 A. Yes. I believe it was captioned Orange  
4 County.

5 Q. Was it a putative class action?

6 A. Yes, I believe it was.

7 Q. So there were three active cases, Mr.  
8 Dies had one and Mr. Speights had two, correct?

9 A. Yes.

10 Q. Now, on the last page over here, page 47,  
11 Grace has as its proposal by the asbestos  
12 property damage litigation track. I think I know  
13 who came up with the word track. But leaving  
14 that aside, it says -- maybe we could prevail  
15 upon our host to make us several copies of this  
16 last page. I want one for the witness and co-  
17 counsel and anybody else.

18 (Deposition recessed from 3:06 p.m.  
19 to 3:08 p.m.)

20 BY MR. SPEIGHTS:

21 Q. In this proposal in the initial case  
22 management motion, I want to go down to June 1,  
23 2002. And it says, as a part of its preliminary  
24 report to the court.





RICHARD CHARLES FINKE

152

1 Let me just stop there.

2 Do you recall anything about Grace  
3 providing a preliminary report to the court after  
4 the PD bar date? And you're welcome to read the  
5 rest of the paragraph, if that will help place it  
6 in context for you.

7 MS. ESAYIAN: Just note an objection  
8 for the record that, as we have discussed  
9 earlier, we don't have the complete document  
10 here.

11 THE WITNESS: I guess the part of  
12 your question that's got me confused is a report  
13 after the bar date. And, yet, this refers to  
14 June 1, 2002.

15 BY MR. SPEIGHTS:

16 Q. This was filed in 2001 when Grace was  
17 seeking a much earlier bar date, if I can provide  
18 an explanation.

19 But, regardless, do you recall it  
20 initially Grace had suggested that it would  
21 provide a preliminary report to the court about  
22 what was filed in response to the bar date with  
23 respect to traditional PD claims?

24 A. No, I don't recall one way or the other.



WILCOX & FETZER LTD.  
Registered Professional Reporters

1 Q. And then it says, Grace will identify  
2 pending cases that would continue to be litigated  
3 in other Courts subject to regular reporting to  
4 the court.

5 Do you recall that Grace had taken  
6 the position early on that certain cases would  
7 continue to be litigated in other Courts subject  
8 to regular reporting?

9 A. I do have a vague recollection of that  
10 being an option or a possible course of action,  
11 yes.

12 Q. And would one of those cases have been  
13 Anderson, which was one of the two still active?

14 A. I don't know. I mean that was a pending  
15 case.

16 Q. It was pretty logical that one of the  
17 active cases would be -- would continue to be  
18 litigated, isn't it?

19 A. Well, the only problem I have, and the  
20 reason I hesitate just agreeing with your  
21 statement, is that the subparagraphs are prefaced  
22 with the statement, Grace will identify, which  
23 suggests to me that Grace may have been intending  
24 to select some cases as opposed to others.



RICHARD CHARLES FINKE

154

1 Possibly to exclude certain cases from one or  
2 more of these subparagraphs.

3 Q. Do you recall having discussions with  
4 anyone about this option to go to the tort  
5 system?

6 A. I don't. No, I don't recall discussions  
7 about it at this point.

8 Q. Do you know what happened to that option  
9 or was it still available for people to take?

10 A. I think the plans that have been filed by  
11 Grace would not or do not permit that option.

12 Q. Isn't it correct that the plan filed by  
13 Grace would prohibit only Anderson of the pre-  
14 filed cases from litigating its claim in the tort  
15 system; that is, all future PD cases can  
16 eventually get to the tort system if they get  
17 through all the hoops?

18 A. There are other cases pending at the time  
19 we filed for Chapter 11. So those cases would  
20 not be permitted to go back into the tort system  
21 once a bar date was established.

22 Q. Let me approach it a different way. I  
23 don't think you and I have a meeting of the minds  
24 on the question and the answer.



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

155

1 Under the plan of reorganization that  
2 Grace has proposed, Solo will be allowed to go  
3 back to the tort system to finish its appeal with  
4 Grace, correct?

5 A. The only part of your question that I  
6 have a problem with is the word allowed. It is  
7 my understanding that absent a settlement  
8 resolution of the Solo claim, Grace has no choice  
9 but to allow that case to return to the New York  
10 appellate courts.

11 Q. That's one down and six to go.

12 Orange County has been settled,  
13 correct?

14 A. Correct.

15 Q. It wasn't part of the seven but it was  
16 the 8th. All right.

17 So we have six other cases. 100 Pine  
18 has settled, correct?

19 A. That is correct.

20 Q. So we have five other cases.

21 You settled Mr. McLean's case,  
22 correct?

23 A. Yes.

24 Q. We have four other cases.



RICHARD CHARLES FINKE

156

1 Prudential you settled, correct?

2 A. Correct.

3 Q. You have three other cases.

4 What are the other three?

5 A. There is Jefferson Parish.

6 Q. You settled that?

7 A. Correct.

8 Q. We are down to two.

9 A. District of Columbia, which I believe did  
10 not file a proof of claim by the bar date.

11 Q. Okay. We are down to one. Isn't  
12 Anderson the only one of the seven or eight left  
13 and doesn't the plan provide that Anderson must  
14 be tried before Judge Fitzgerald?

15 A. Yes.

16 Q. And isn't it true that the plan provides  
17 that, for the future traditional PD claims, they  
18 can go to the tort system for trial if they go  
19 through certain hoops before Judge Fitzgerald or  
20 some other bankruptcy judge?

21 A. Correct.

22 Q. Who devised that scheme?

23 MS. ESAYIAN: Objection to form.

24 THE WITNESS: Grace's bankruptcy



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

157

1 counsel.

2 BY MR. SPEIGHTS:

3 Q. Kirkland & Ellis?

4 A. Yes.

5 MR. SPEIGHTS: Let's take a break,  
6 please. Maybe ten minutes this time.

7 (Deposition recessed from 3:15 p.m.  
8 to 3:33 p.m.)

9 BY MR. SPEIGHTS:

10 Q. Did Grace or any of its affiliated  
11 companies ever sell any fireproofing to countries  
12 other than the United States and Canada?

13 A. I believe we sold -- you said asbestos  
14 containing fireproofing or just fireproofing?

15 Q. No. Fireproofing.

16 A. Just fireproofing?

17 Q. I'll come back to that.

18 A. Japan and Australia. I don't know if we  
19 sold anyone else, fireproofing to anyone else.

20 Q. Was that handling through the  
21 construction products division or another  
22 division of Grace?

23 A. It would have been construction products.

24 Q. Do you have any records showing job sites



RICHARD CHARLES FINKE

158

1 of Japanese and Australian building owners who  
2 got fireproofing?

3 A. I am not aware of any.

4 Q. Does the bar date purport to bar those  
5 claimants?

6 A. I don't think so.

7 Q. Did Grace sell any asbestos containing  
8 materials of any kind outside of the United  
9 States and Canada?

10 A. My understanding is we did sell them some  
11 Japan and Australia.

12 Q. Are you back to fireproofing now or other  
13 products as well?

14 A. My knowledge is limited to asbestos  
15 containing fireproofing. We also did ship or  
16 there were shipments of Libby Vermiculite to  
17 Japan. Although we don't consider that asbestos  
18 containing material as defined by U.S. regulatory  
19 agencies. Some people might since presumably  
20 such shipments contained some small amount of  
21 amphibole asbestos.

22 Q. Is Zonolite attic insulation used in  
23 facilities other than homes?

24 A. I'm sure it could have been. Offhand,



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

159

1       though, I don't recall an example of a building  
2       other than a home in which we have found it.

3           Q.   Does a bar date for ZAI, whatever  
4       Canadian bar date there is, bar Japanese ZAI  
5       claims?

6           A.   I don't believe so.

7           Q.   To your knowledge, has Grace had any  
8       communication from the Japanese, the Japanese  
9       government or homeowners, et cetera, concerning  
10      its ZAI product?

11          A.   To my knowledge, no, we have not.

12          Q.   What is ZAI known as in Japan?

13          A.   I don't even know if ZAI was sold in  
14      Japan. There were shipments of Libby Vermiculite  
15      sent to Japan. I did not know to what uses that  
16      Vermiculite was put.

17          Q.   Was the expanding plant in Japan?

18          A.   I believe there was. But I don't know  
19      that for certain.

20          Q.   Do you know whether it still exists?

21          A.   I don't.

22          Q.   Where would you go to determine the  
23      records that exist regarding the shipment of  
24      Vermiculite to Japan?





1 A. We would look at our Vermiculite  
2 documents.

3 Q. Were those produced to Messrs. Westbrook  
4 and Scott during the litigation?

5 A. Yes.

6 Q. So that they would have the ability to  
7 look up what shipments were made to Japan, what  
8 Vermiculite shipments were made to Japan?

9 A. Assuming such records exist in those --  
10 in that document set, yes.

11 Q. Well, do you believe there are records  
12 that show shipments to Japan?

13 A. I have no way of knowing or I have no  
14 basis to have an opinion one way or the other.

15 Q. Would you agree with me that the Anderson  
16 class included residences?

17 A. I don't recall.

18 Q. Does Grace have copies of sales documents  
19 showing where its texture products such as  
20 Versakote were sold?

21 A. I believe there are some records such as  
22 invoices that reflect sales of Versakote. And I  
23 would assume that they would have, on the  
24 invoice, the location where the Versakote was



1 shipped to.

2 Q. Would those be in the document  
3 depository?

4 A. Yes.

5 Q. Other than what's in the documents  
6 depository, is there some stash of sales  
7 information about texture products? Mr. Egan  
8 always said that wasn't under his umbrella.

9 A. There shouldn't be. All those documents  
10 should be in Winthrop Square.

11 Q. Have you ever seen the so-called BOMA  
12 list of BOMA members in the United States which  
13 SBA used for mailouts?

14 A. No, I haven't seen that.

15 Q. Did you know about it?

16 A. I know of BOMA. I assume they have a  
17 list of members. But I don't know what list  
18 you're referring to specifically.

19 Q. If after the plan of confirmation is  
20 confirmed, if that, indeed, happens, and somebody  
21 sues a building owner for asbestos disease caused  
22 by exposure to ZAI in a home, can the homeowner  
23 look to reorganize Grace or the PI trust or  
24 somebody, someone else to indemnify it?



1 A. My understanding is that the homeowner  
2 would have a claim against the personal injury  
3 trust.

4 Q. Where is that set forth?

5 A. I believe that's in the plan under the  
6 definition of indirect PI trust claim. I may not  
7 have the exact terminology there.

8 Q. Does the indemnification cover defense as  
9 well as payment of the claim?

10 A. That would be set forth in the PI TDP.  
11 And I would refer to that document before trying  
12 to answer your question. Because I'm not sure of  
13 the answer.

14 Q. If somebody had sued Grace in 1979 for  
15 exposure to Monokote in the Jordan Hospital in  
16 Plymouth, Massachusetts, would someone at Grace  
17 have gone to see whether it had any records of  
18 Monokote being in the Jordan Hospital?

19 A. This is a hypothetical lawsuit before  
20 1979?

21 Q. No. In 1999. I said before the  
22 bankruptcy. I meant to say that. I may have  
23 misspoken.

24 A. Maybe I misheard it. Okay. I'm sorry.



RICHARD CHARLES FINKE

163

1 Q. 1999. Somebody serves a complaint  
2 alleging mesothelioma exposure in the Jordan  
3 Hospital in Plymouth, Mass, would the Grace  
4 person handling the PI claims check to see if  
5 there were any records showing Monokote had been  
6 installed in the Jordan Hospital?

7 A. I don't know.

8 Q. Who would be the best person to ask that  
9 question to?

10 A. Jay Hughes.

11 Q. Is Mr. Hughes in Columbia or Boca?

12 A. He is based in Cambridge, Massachusetts.

13 MR. SPEIGHTS: That's all I have at  
14 this time, Mr. Finke. I reserve my position to  
15 be able to pursue those questions which counsel  
16 has instructed you not to answer and other  
17 questions that flow from that, if I am permitted  
18 to proceed along those lines.

19 Would somebody who wants to question  
20 the witness like to have this chair or can we do  
21 it from wherever you are?

22 MR. BROWN: Does anyone else on the  
23 PD side have any questions?

24 Okay. Why don't we take a five



RICHARD CHARLES FINKE

164

1 minute break.

2 (The deposition was recessed from  
3 3:46 p.m. to 3:53 p.m.)

4 EXAMINATION

5 BY MR. BROWN:

6 Q. Mr. Finke, my name is Michael Brown and I  
7 represent the cast of foreign insurance companies  
8 that I identified earlier.

9 I want to go back and fill in some of  
10 the blanks in terms of your employment history  
11 with Grace. And I want to start by asking the  
12 role that you had pre-petition and then go to  
13 post-petition.

14 As I understand it, you were senior  
15 litigation counsel at the time the petition was  
16 filed?

17 A. Yes.

18 Q. And prior to that, your primary  
19 responsibility was with PD claims, is that  
20 correct?

21 A. Yes.

22 Q. And I think you identified some minimal  
23 involvement on the PI side?

24 A. Right. Very sporadic.



WILCOX & FETZER LTD.  
Registered Professional Reporters

1 Q. And that was primarily when there was a  
2 PD expert, as I understood it, that may have some  
3 application to PI claims?

4 A. More or less, yes. Or was involved in  
5 some way in a property -- I'm sorry, personal  
6 injury case, which might have ramifications for  
7 property damage litigation.

8 Q. Okay. And then other than what you  
9 described earlier, you had no involvement on the  
10 PI side?

11 A. That's right.

12 Q. Okay. Who did have the involvement on  
13 the PI side?

14 A. Jay Hughes.

15 Q. And what was Mr. Hughes' title  
16 pre-petition?

17 A. I believe it was also senior litigation  
18 counsel.

19 Q. Okay. So you were senior litigation  
20 counsel on PD, he was senior litigation counsel  
21 on PI?

22 A. Correct.

23 Q. And who did you report to at that time?

24 A. When I first started, it was in 1989, it



RICHARD CHARLES FINKE

166

1 was Robert Beber.

2 Q. How do you say that?

3 A. Beber. B-e-b-e-r.

4 Q. Okay. Beber?

5 A. Right.

6 I don't recall his title at the time.  
7 He was not general counsel. He became general  
8 counsel a year to two after that.

9 Q. Okay. And at the time of the petition,  
10 that's who you were reporting to?

11 A. At the time of the Chapter 11 petition, I  
12 was reporting to David Siegel, general counsel.

13 Q. Okay. Mr. Siegel had replaced Mr. Beber  
14 by that point?

15 A. Yes.

16 Q. Okay. And how about Mr. Hughes at the  
17 time of the petition? Who did he report to  
18 directly?

19 A. Also to Mr. Siegel.

20 Q. And Mr. Siegel was the GC at that time?

21 A. Yes.

22 Q. Did Grace have national coordinating  
23 counsel for PI claims pre-petition?

24 A. I don't know if they were actually deemed



RICHARD CHARLES FINKE

167

1 or considered national coordinating counsel. But  
2 the Casner & Edwards law firm in Boston --

3 Q. I'm sorry. What was the name of that?

4 A. Casner & Edwards, C-a-s-n-e-r, & Edwards  
5 law firm in Boston performed some of the  
6 functions of national coordinating counsel.

7 Q. Okay. Were they also local counsel for  
8 the Boston area?

9 A. I believe they were, yes. Yes, in fact,  
10 I think they were.

11 Q. Okay. And what were the national  
12 coordinating counsel functions that they  
13 undertook?

14 A. Supported local counsel throughout the  
15 country in terms of providing documents and  
16 transcripts, coordinating the use of experts. I  
17 think they were also involved in responding to  
18 standard discovery requests.

19 Q. And how many sets of counsel around the  
20 country did Grace have with respect to the  
21 defense of PI claims?

22 A. Probably -- I'm going to say 25. That's  
23 just a little bit more than a guess. As I said,  
24 I wasn't involved with the litigation of the





RICHARD CHARLES FINKE

168

1 personal injury cases.

2 Q. Okay. Mr. Hughes was the individual who  
3 dealt primarily with the outside counsel handling  
4 PI claims?

5 A. Yes.

6 Q. Who else at Grace was involved in the  
7 handling of PI claims?

8 A. Really, no one else. He had a staff of  
9 legal assistants that helped to maintain the  
10 files. But Jay was really the only in-house  
11 attorney involved with the personal injury cases.

12 Q. What about Mr. Beber?

13 A. He would have been involved as well to  
14 the extent of being Jay's superior.

15 Q. And then Mr. Siegel after Mr. Beber?

16 A. After Mr. Beber, right.

17 Q. All right. You I believe testified  
18 earlier this morning that you became assistant GC  
19 for litigation in March of 2006, is that correct?

20 A. I think so.

21 Q. Was that a new position?

22 A. Yes.

23 Q. Okay. And if I understood your testimony  
24 earlier today, that from that point forward,



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

169

1 Mr. Hughes reported to you rather than reporting  
2 to the general counsel?

3 A. Yes.

4 Q. Okay. So from March of 2006 on, is it  
5 fair to say you have played some role on the PI  
6 side?

7 A. Yes. But I would describe it still as a  
8 minor role.

9 Q. Can you describe for me what the role has  
10 been?

11 A. More coordination with the other parts of  
12 our reorganization effort to make sure that  
13 others working on the reorganization such as  
14 finance, such as those who prepare our SEC  
15 disclosure documents, were kept informed of  
16 developments, facts, relating to the personal  
17 injury claims in the Chapter 11.

18 Q. I think you used the term you were  
19 coordinating the parts. Can you tell me what you  
20 mean by the parts?

21 A. Well, yes. When I -- part of the role of  
22 assistant general counsel in the Chapter 11 was  
23 to coordinate and oversee all of the individuals  
24 involved, both at Grace as well as outside



RICHARD CHARLES FINKE

170

1 counsel as well as certain outside consultants.  
2 And in coordinating meetings, making sure  
3 essential documents were distributed  
4 appropriately. And reporting to management on  
5 any developments in the Chapter 11, any issues or  
6 problems that were arising or had arisen. All of  
7 this was in support of the general counsel who  
8 also denoted our chief restructuring officer and  
9 had ultimate responsibility for and continues to  
10 have ultimate responsibility for the  
11 reorganization effort.

12 Q. Okay. When did Mr. Shelnitz become the  
13 GC?

14 A. I think it was in the spring of 2005.

15 Q. Okay. And did I hear you right, that he  
16 is also the chief restructuring officer?

17 A. Yes.

18 Q. And he is also the secretary of the  
19 corporation?

20 A. I believe. Well, I know he was. I think  
21 he still is.

22 Q. Does he have any other titles?

23 A. No, I don't think so.

24 Q. So is it fair to say that you and



WILCOX & FETZER LTD.  
Registered Professional Reporters

RICHARD CHARLES FINKE

171

1 Mr. Shelnitz were the point people at Grace for  
2 the restructuring effort?

3 A. Yes.

4 Q. Was he primarily responsible for it and  
5 you secondarily responsible?

6 A. Yes.

7 Q. And it was in that capacity that you had  
8 involvement on the PI side after you became the  
9 assistant GC for litigation?

10 A. Yes.

11 Q. Okay. And can you describe for me  
12 precisely what role you played on the PI side?

13 A. Essentially, it was participating in  
14 numerous conference calls and meetings to stay  
15 abreast of issues and problems relating to the  
16 personal injury claims and any potential  
17 resolution of them and coordinating with outside  
18 counsel, make sure that they had what they needed  
19 in the way of either information or documents or  
20 guidance, to obtain that information, documents  
21 or guidance, which, quite frankly, often involved  
22 having Jay Hughes either research anything that  
23 he didn't know off the top of his head and  
24 provide it to whoever needed it since Jay is the



WILCOX & FETZER LTD.  
Registered Professional Reporters

1 I wouldn't say sole source but he is certainly by  
2 far the principal source of information relating  
3 to not only the personal injury claims  
4 litigation, but the settlements that were worked  
5 out pre-petition of those claims, dealings with  
6 and relationships with outside counsel, both our  
7 own as well as plaintiff's counsel. Reviewing  
8 any documents, whether they are, you know,  
9 pleadings or otherwise. Really relating to most  
10 of the issues and proceedings in the  
11 reorganization but particularly those relating to  
12 asbestos claims, which would include personal  
13 injury claims.

14 Q. You mentioned dealing with your own  
15 counsel and also dealing with plaintiff's  
16 counsel. Which plaintiff's attorneys did you  
17 deal with?

18 A. I did not deal with personal injury  
19 plaintiffs. Jay had, over the years of managing  
20 the outside, managing the personal injury  
21 litigation, and he worked on most, if not all, of  
22 the settlements that were negotiated with the  
23 plaintiff's counsel.

24 Q. You're talking pre-petition now?



RICHARD CHARLES FINKE

173

1 A. Pre-petition, yes.

2 Q. What about post-petition?

3 A. Jay was certainly part of the group that  
4 negotiated the resolution of personal injury  
5 claims that is embodied in the plan. But that  
6 group included others as well.

7 Q. Others within Grace?

8 A. Others within Grace as well as, of  
9 course, outside counsel. And I was not directly  
10 involved in those discussions or negotiations.

11 Q. With whom did Mr. Hughes negotiate?  
12 Which individuals are you talking about?

13 A. The representatives of the personal  
14 injury claimant's committee.

15 Q. Do you know the actual names of the  
16 attorneys?

17 A. I can make some assumptions. I can't be  
18 a hundred percent sure that they are correct.  
19 Elihu Inselbuch, Peter Lockwood, Roger Frankel,  
20 Rick Wiram and -- I feel like I'm leaving some  
21 out. But those are the names that come to mind.

22 Q. Did he have any dealings with the  
23 individuals that have been designated to be the  
24 TAC members?



RICHARD CHARLES FINKE

174

1 A. Pre-petition or post-petition?

2 Q. Post-petition we are talking about. As  
3 you were describing his role in the negotiations.

4 A. I don't know.

5 Q. And was your role in dealing with PI  
6 issues and the resolution of PI issues indirect  
7 in the sense that Mr. Hughes reported to you or  
8 did you have any direct involvement?

9 A. It was really indirect.

10 Q. And besides Mr. Hughes, who else was  
11 involved in that effort on the Grace side?

12 A. Mark Shelnitz, the general counsel.  
13 Robert Tarola.

14 Q. I'm sorry?

15 A. Robert Tarola, T-a-r-o-l-a, the former  
16 CFO. The CEO, Fred Festa, had some involvement.  
17 And outside counsel, David Bernick. And I  
18 believe -- I don't know if Ted Freedman was  
19 involved with the negotiations or came in after a  
20 deal had been reached.

21 Q. Other than the individuals you have just  
22 run through on the Grace side, was there anyone  
23 else that you can recall that was on the Grace  
24 negotiating team for the resolution of the PI



WILCOX & FETZER LTD.  
Registered Professional Reporters